IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Writ Petition No.3192 of 2005

Dr.Shashikant D. Karnik & anr. Petitioners

Vs.

The State of Maharashtra & ors. Respondents

Mr.Samir Vaidya for petitioners.

Mr.A.S.Gadkari, APP for State.

CORAM: B.H.MARLAPALLE & SMT.R.S.DALVI,JJ.

February 23, 2006.

P.C.

1. Heard Mr.Vaidya, the learned counsel for the petitioners. This petition filed under Article 226 of the Constitution prays for quashing the FIR registered under C.R.No.37 of 2005 by the Anti Corruption Bureau of the State of Maharashtra for the offence set out under Section 13(1)(e) of the Prevention of Corruption Act, 1988. The petitioner no.1 is the main accused and petitioner no.2 is the wife of petitioner no.1. The challenge raised is on a limited ground that for the same offence a second FIR cannot be registered. In addition it has been

contended before us that the tenure of the petitioner no.1 as the Chairman of the Maharashtra Public Service Commission for the period from 25/7/1999 to 17/9/2001 and subsequent tenure as a Member of the UPSC from 18/9/2001 to 16/7/2002 will not come within the ambit of Section 2(c)(x) of the Prevention of Corruption Act, 1988 and the third ground urged before us by the learned counsel is on the basis of the scheme of Section 154 read with Section 173(8) of Cr.P.C. and the decision of the Apex Court in the case of T.T.Antony Vs. State of Kerala & ors.

[(2001) 6 SCC 181].

2. We have noticed that in the first FIR registered against the petitioners the charge-sheet was submitted to the Special Judge under the Prevention of Corruption Act and the charge-sheet is for the offences under Sections 120-B and 120-B read with Sections 120, 119, 217, 218, 409, 418, 420, 424, 465, 466, 467, 468, 471, 474, 477(a), 380, 381, 457, and 201 read with Section 34 of IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and again read with Section 109 of IPC and Sections 5, 7 and 8 of the Maharashtra Prevention of Malpractices at University, Board and

other Specified Examinations Act, 1982. The present FIR dated 21/12/2005 is for the offence under Section 13(1)(e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of IPC. The learned counsel for the petitioners has taken us elaborately through the report submitted in the first FIR as well as the impugned FIR. It is stated that the petitioner no.1 was working as a Lecturer in Kirti College, Dadar from 1966 to 1971, Lecturer at the Mumbai University from 1971 to 1973, Reader, ICSSR from 1973 to 1978, Joint Director, ICSSR from 1978 to 1983, Director, ICSSR, Western Region Council from 1983 to 1988, Dean, Arts Faculty of Mumbai University from 1989 to 4/5/1992. He came to be appointed as the Vice Chancellor of the University of Mumbai on 5/5/1992 and he held the said post till 4/5/1995 and thereafter he came to be appointed as the Director of ICSSR upto July 1999. His subsequent tenure as the Chairman of the MPSC and Member of the UPSC has already been mentioned by us hereinabove and he resigned from the Membership of UPSC on 16/7/2002. The FIR also gives a long list of the assets allegedly held by the petitioner no.1 along with petitioner no.2 or in his name alone or in the name of the petitioner no.2 alone.

. In the case already pending before the Special Court, charge under Section 13(1)(e) is not pending and, therefore, there is no reason to accept the contentions that the second FIR impugned in this petition is on the very same charges as were covered by the first FIR.

2A. Coming to the second ground, it was contended by the learned counsel for the petitioners that the Chairman of MPSC is an appointment made by the President of India under Article 316 of the Constitution and so is the case for appointment of the Member, UPSC and the removal of such appointees is covered by Article 317 of the Constitution. It was submitted that by no stretch of imagination a Member or Chairman of Public Service Commission could be called a "Public servant" or a "Government servant" and, therefore, he has the immunity from investigations for any offences under the Prevention of Corruption Act, 1988. The learned counsel referred to the Constitution Bench decision in the case of K.Veeraswami v. Union of India & ors. **[(1999) 3 SCC 655]**. In fact the said decision goes against the petitioner and in any case we are not

dealing with the issue of sanction to be granted by the Competent Authority for prosecution, in this petition.

3. Section 173(8) of Cr.P.C. deals with the power of undertaking further investigation in respect of the same offence and obviously arising from the same transaction. As noted earlier in the first FIR the offence under the Prevention of Corruption Act was under Section 13(1)(d) and in the fresh FIR the offence registered is under Section 13(1)(e) of the said Act. Thus it is not the same offence.

3A. The learned counsel for the petitioner further argued that all along the petitioner was under investigations for the last about more than two years and in various affidavits filed before this Court as well as the Apex Court, the State Government and the Anti Corruption Bureau were dealing with the offence falling within the ambit of Section 13(1)(e) and, therefore, it cannot be now accepted that it is a fresh charge. We do not agree with these submissions and we are satisfied that the investigation now undertaken in the impugned FIR is not covered by the proceedings already pending before the Special Court

and, therefore, there is no question of any fresh investigation into the same offence or filing a joint charge-sheet under Section 223 of Cr.P.C. We are, in this regard, supported by recent decision in the case of Rameshchandra Nandlal Parikh vs. State of Gujarat **[(2006) 1 SCC 732].**

4. Lastly it was submitted by the learned counsel for the petitioners that in Section 2(c)(x) the words used are "chairman or member of any Service Commission" and there is no reference to the Public Service Commission and, therefore, the tenure of the petitioner no.1 as the Chairman of MPSC or Member of UPSC is not covered within the ambit of the said term "public servant". We have noted that the words "chairman, member of any Service Commission" have been qualified by further words "by whatever name called" and, therefore, it would include Chairman or Member of the Public Service Commission as well.

5. Regarding the apprehension of the petitioner about his tenure as a Lecturer in private college, we are sure the Investigating Officer will have regard to the provisions of Section 2(c)(xii) of the Prevention of Corruption Act as well and if it is

noticed that before the petitioner joined the Mumbai University he was working with a private unaided college the petitioner would be out of the purview of public servant for that tenure.

5A. As the petitioner is neither a member or chairman of any Public Service Commission after 16/7/2002, we need not go into the amplitude of Article 317 of the Constitution.

6. We are, therefore, satisfied that there is no reason to entertain this petition and it must fail at the threshold. The same is hereby rejected summarily. However, we direct that the conditional protection granted to petitioner no.2 shall continue to apply to her, till the investigation is completed.

7. The learned counsel for the petitioners submitted an oral application for continuing the protection to the petitioner no.1. We do not see any justification in granting such prayer at this stage and, therefore, the oral application is rejected.

8. Needless to mention, the observations made in this order will not influence in any way the

investigating agency or the Special Court or for considering an application for anticipatory bail that may be presented by the Petitioner No.1 before the appropriate Court.

(SMT.R.S.DALVI,J.) (B.H.MARLAPALLE,J.)